Supreme Court, U. S.
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IN THE

SUPREME COURT OF THE UNITED STATES

NO. 78-5693

DANIEL ROSS,

Petitioner

v.

KAYE BYRD, et al.,

Respondent

RESPONDENT'S BRIEF

RUFUS L. EDMISTEN
Attorney General

Ben G. Irons, II
Assistant Attorney General

N. C. Department of Justice
P. O. Box 629
Raleigh, North Carolina 27602

Telephone: (919) 733-7188

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IN THE

SUPREME COURT OF THE UNITED STATES

NO. 78-5693

DANIEL ROSS,

Petitioner

v.

KAYE BYRD, et al.,

Respondents

RESPONSE TO PETITION FOR WRIT OF CERTIORARI
TO REVIEW A DECISION OF THE UNITED STATES
COURT OF APPEALS FOR THE FOURTH CIRCUIT

CITATIONS TO OPINION BELOW

The opinions of the United States Court of Appeals for the Fourth Circuit and the United States District Court for the Eastern District of North Carolina are unreported. Both opinions are attached to this Brief at pp. 10-12.

JURISDICTION

Petitioner seeks to invoke the jurisdiction of this Court pursuant to 28 U.S.C. § 1343.

QUESTIONS PRESENTED

I. WHETHER THIS CASE IS RIPE FOR DISCRETIONARY REVIEW BY THIS COURT?

II. WHETHER THE DUE PROCESS CLAUSE OF THE UNITED STATES CONSTITUTION IS APPLICABLE TO DECISIONS TO GRANT OR DENY PAROLE IN NORTH CAROLINA?

III. WHETHER ROSS IS ENTITLED TO INSPECT HIS PRISON FILE IN ORDER TO ASSURE THAT IT CONTAINS NO ERRONEOUS INFORMATION?

CONSTITUTIONAL PROVISIONS

Petitioner's allegations raise questions involving the Fourteenth Amendment to the Constitution of the United States.

STATEMENT OF THE CASE AND FACTS

Daniel Ross, a state court prisoner in the custody of the North Carolina Department of Correction, brought this Civil Rights Action against the North Carolina Parole Commission and one of its Case Analysts in the United States District Court for the Eastern District of North Carolina. He alleged that he had been denied parole without due process. Specifically, he claimed that he had not been allowed to inspect his prison file. The file of course, contained data that the Parole Commission considered in making its decision to deny parole to Ross. Ross does not allege that any particular information contained in his file is or might be incorrect. Instead, he claims an unlimited right to inspect the file and implies that the Commission's failure to permit inspection shows its bad faith. The District Court, relying on Franklin v. Shields, 569 F.2d 784, 800 (4th Cir. 1978) (en banc)[1] concluded that the complaint failed to state a claim and issued an order of dismissal. The United States Court of Appeals for the Fourth Circuit summarily affirmed "for the reasons stated by the District Court."[2] Ross then petitioned this Court for discretionary review.

INTRODUCTORY STATEMENT

Before responding to the legal issues raised by Ross' Petition, we feel compelled to briefly reply to his indictment of the parole process in North Carolina. From his petition, one might conclude that he and others similarly situated have no knowledge of parole criteria or the reasons for parole denial. Actually, the North Carolina Parole Commission's investigative process is a very thorough one. The Commission's procedures for investigating cases for parole have been codified and filed with the Office of the North Carolina Attorney General in accordance with N.C.G.S. 143B-261.1. Eighty-one pages of this Publication involve the Commission's review and investigation of parole cases. See 5 NCAC 4C and 5 NCAC 4D. Each prisoner is fully apprised of the Commission's expectations in plain English. The attached

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1. In Franklin, the Fourth Circuit had held that although the Due Process Clause attaches to decisions involving parole, the requirements of the Clause are met if the prisoner is furnished a statement of the reasons for the Commission's decision. The Court specifically noted that the prisoner had no right of access to his prison file. See Franklin v. Shields, supra at 800.

2. See pp. 11-12 , infra.

pages from the Inmate Handbook distributed to each inmate vividly illustrate this point.[3] Ross cannot complain that he was not aware of what will be expected of him.

ARGUMENT

I. THIS CASE IS NOT RIPE FOR DISCRETIONARY REVIEW BY THIS COURT.

Ross' contention that his case has not been investigated for parole is true. His contentions in his petition however, fail to point out that he is not eligible for parole until 1981.[4] The attached commitment indicates that Ross was committed to the Department of Correction on March 20, 1969 for first degree murder. He received a life sentence and was later awarded 90 days credit for time spent in confinement prior to trial. At the time of Ross' commitment, North Carolina's Parole Eligibility Statute, N.C.G.S. 148-58, provided that "any prisoner serving sentence for life shall be eligible for parole consideration when he has served 10 years of his sentence." Under N.C.G.S. 148-58, Ross would have been eligible for parole on or about November 30, 1978. On July 25, 1975, however, he escaped from one of the State's minimum security institutions and was not recaptured until September 29, 1977.[5] The escape of course, delayed Ross' eligibility for parole until February, 1981. It is well established that "to entitle a private individual to invoke judicial power to determine the validity of executive or legislative action, he must show that he has sustained or is immediately in danger of sustaining a direct injury as a result of that action." Laird v. Tatum, 408 U.S. 1, 13 (1972) citing Ex Parte Levitt, 302 U.S. 633 (1937). See also O'Shea v. Littleton, 411 U.S. 488, 494 (1974). Obviously, Ross can show no injury. He has no standing and this case is not ripe for review.

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3. See pp.13-14 infra.

4. See pp.15-16 infra.

5. See Affidavit of James C. Woodard at pp.17-18.

II. THE DUE PROCESS CLAUSE DOES NOT APPLY TO DECISIONS TO GRANT OR DENY PAROLE IN NORTH CAROLINA.

The procedural question raised by Ross is similar to that already before the Court in Inmates of Nebraska Penal Complex v. Greenholtz, No. 78-201. His claim is that North Carolina Statutes entitle him to procedural due process. N.C.G.S. 148-58, the Statute applicable to Ross, provides that:

> All prisoners shall be eligible to have their cases considered for parole when they have served a fourth of their sentence, if their sentence is determinate, a fourth of their minimum sentence, if their sentence is indeterminate; provided that any prisoner serving sentence for life shall be eligible for such consideration when he has served 10 years of his sentence. Nothing in this Section shall be construed as making mandatory the release of any prisoner on parole, but shall be construed as only guaranteeing to every prisoner a review and consideration of his case on the merits.

We do not believe that this Statute creates any liberty or property interest. It specifically provides that "nothing in this Section shall be construed as making mandatory the release of any prisoner." In G.S. 148-60, the North Carolina General Assembly added that "the time of releasing prisoners shall be discretionary." In Meachum v. Fano, 427 U.S. 215 (1976) and its companion case Montayne v. Haymes, 427 U.S. 237 (1976), this Court held that the Due Process Clause does not apply to a prisoner's transfer

> "absent some right or justifiable expectation rooted in state law that he will not be transferred except for misbehavior or upon the occurrence of other specified events." Montayne, supra at 242.

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6. N.C.G.S. 148-58 has been amended. However, North Carolina's current Parole Eligibility Statute, N.C.G.S. 15A-1371 does not apply to persons sentenced before July 1, 1978. See North Carolina Session Laws 1977, c. 711 s. 39, which provides:

> "This Act shall become effective July 1, 1978 and applies to all matters addressed by its provisions without regard to when a Defendant's guilt was established or when judgment was entered against him except that the provisions of Article 85, 'parole' shall not apply to persons sentenced before July 1, 1978."

These decisions make it clear to us that for a right to be conferred, the Statute must limit the exercise of administrative discretion. See Lombardo v. Meachum, 548 F.2d 13, 16 (1st Cir. 1977), Four Certain Unnamed Inmates v. Hall, 550 F.2d 1291 (1st Cir. 1977). Neither G.S. 148-58 nor G.S. 148-60 nor any other Statute provides standards which control the exercise of the Parole Commission's discretion.[7] The Statutes are general directives that do not confer any rights. A "right to be considered" is no right at all.

We concede that our analysis of this question has not been universally accepted. The Circuit Courts have analyzed a variety of Parole Eligibility Statutes in a variety of ways.[8] Some Courts agree with us that the Clause does not apply to parole proceedings. Other Circuits have held the Clause applicable, but express differing views on the question of procedures that must be employed in order to meet the requirements of the Clause. Some have held that a statement of reasons for the action taken is sufficient to comply with the Clause.[9] Two Circuits require formal hearings in which the inmate is allowed to appear and "rebut" information that might be adverse to him.[10] All of these inconsistencies however, will be resolved by this Court when it reaches its decision on the merits in Greenholtz. Therefore, it would appear unnecessary for the Court to review this case.

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7. It is interesting to note that North Carolina's current Parole Eligibility Statutes, G.S. 15A-1371 et seq., also allow the Commission total discretion.

8. Brown v. Lundgren, 528 F.2d 1050 (5th Cir.) cert. den., 429 U.S. 917 (1976); Scott v. Kentucky Parole Board, No. 74-1899 (6th Cir.) vacated and remanded to consider mootness, 429 U.S. 60 (1976).

9. See n.9 on page 6.

10. See n.10 on page 6.

III. ROSS IS NOT ENTITLED TO INSPECT HIS FILE TO DETERMINE WHETHER IT CONTAINS ERRORS.

The Court should note that despite the conflicting viewpoints with respect to the applicability of due process to parole decision making above, there does seem to be uniform agreement that the Due Process Clause does not entitle prison inmates to wholesale access to their prison files. Most Circuits that have decided the access question have determined that prisoners are entitled to no access. Franklin v. Shields, supra; Fronczak v. Warden, 431 F.Supp. 981, aff'd 553 F.2d 1219 (10th Cir. 1977); Tarleton v. United States, 430 F.2d 1351 (5th Cir. 1970). This rule applies even after parole has been denied. See e.g., Billiteri v. U.S. Board of Paroles, 541 F.2d 938 (2nd Cir. 1976). Further, the fact that a right of access might enhance the efficiency and accuracy of prison and parole decision making does not create a constitutional privilege in the prisoner to review his records. Dorado v. Kerr, 452 F.2d 892 (9th Cir. 1972). It is true that a few Courts have indicated that if a prisoner can demonstrate a particularized need for certain information, access might be allowed. One Court for example, indicated that:

> There may be some circumstances where an inmate plausibly contends that the only way he can demonstrate reliance on an impermissible fact or can show a particular allegation concerning his record to be false, is by obtaining access to detailed evidence in his file, albeit in redacted form.
>
> We are not required to express an opinion how such a case should be decided, since we do not have that situation here. There is no showing that Williams suffered any prejudice from the lack of access to his files. Williams v. Ward, 556 F.2d 1143, 1160 (2nd Cir. 1976).

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9. (n.9 cont'd from p. 5) See Franklin v. Shields, supra; U.S. ex rel. Johnson v. Chairman New York State Board of Paroles, 500 F.2d 925 (2nd Cir.) vacated as moot, 419 U.S. 1015 (1974); U.S. ex rel. Richerson v. Wolff, 525 F.2d 797 (7th Cir.) cert. den., 425 U.S. 914 (1976).

10. (n.10 cont'd from p.5)

See Childs v. U.S. Board of Parole, 511 F.2d 1270 (D.C.Cir. 1974); Inmates of Nebraska Penal and Correctional Complex v. Greenholtz, 576 F.2d 1274 (8th Cir.) cert. granted, _____U.S._____(October 2, 1978).

In no case that we are able to discover has a Court ordered a correctional agency to allow an inmate to go on a fishing expedition through his file in the hope that he may find some mistake in it. Ross' specific claim then, raises no substantial constitutional questions.

Moreover, allwoing access to prison files would be burdensome and would undermine efforts to maintain security and promote rehabilitation of prisoners. North Carolina maintains a Central Prison File on the prison records of more than 15,000 prisoners who are housed in more than 80 separate locations. The logistics of permitting inmates to examine their prison jackets would present an overwhelming problem. More important, the opening of iles to prisoners would violate the confidentiality of sources important in the development of background information on prospective parolees. See Sites v. McKenzie, 423 F.Supp. 1190, 1196 (N.D.W.Va. 1976). Other factors which must be considered include the following:

(1) Danger to third persons if their identity accidentally became known to an inmate reviewing his file.

(2) The potential harm in making available the contents of psychiatric and psychological evaluations.

(3) The discouraging effect on frank expression of opinion by persons who must comment on the inmates rehabilitative progress.

(4) The detrimental psychological effect upon the inmate of negative reports.

(5) The possibility of inadvertent release of the names of confidential sources in official crime reports.

Finally, this Court knows but too well that unlimited access would inundate the District Courts with time consuming frivolous prisoners' lawsuits alleging errors and irregularities in their files and seeking orders to correct these "errors."

CONCLUSION

For all these reasons, Ross' contentions are without merit and his Petition for Discretionary Review should be denied.

Respectfully submitted,

RUFUS L. EDMISTEN
Attorney General

Ben G. Irons, II
Assistant Attorney General

N. C. Department of Justice
P. O. Box 629
Raleigh, North Carolina 27602

Telephone: (919) 733-7188

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Response to Petition for Writ of Certiorari to Review a Decision of the United States Court of Appeals for the Fourth Circuit has been mailed, Postage Prepaid, to the following: Mr. Daniel Ross, P. O. Box 155, Bunn, North Carolina 27508.

This the 15th day of January, 1979.

Ben G. Irons, II
Assistant Attorney General

FILED

JUL 7 1978

JOHN R. WHITTY, CLERK
U. S. DISTRICT COURT
E. DIST. NO. CAR.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
RALEIGH DIVISION

DANIEL ROSS,

Plaintiff

VS.

KAYE BYRD, etc., THE STATE OF NORTH CAROLINA PAROLE COMMISSION, etc., et al.,

Defendants

NO. 78-317-CRT

O R D E R

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Plaintiff in this civil rights action desires access to the information in his parole file, asserting that some of the facts found therein are erroneous. An en banc Fourth Circuit having held that there is no constitutional right to such information, Franklin v. Shields, ___ F.2d ____ (1978), the complaint fails to state a claim.

Accordingly, the motion to proceed in forma pauperis is allowed but the action is dismissed.

F. T. DUPREE, JR.
UNITED STATES DISTRICT JUDGE

July 6, 1978.

A True Copy, Teste:
John R. Whitty, Clerk
By Dorothy W. Williams
Deputy Clerk

UNPUBLISHED

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 78-6449

(Formerly Misc. No. 78-8296)

Daniel Ross,

Appellant,

v.

Kaye Byrd, individually and in her person and official capacity as Case Analyst of the State of North Carolina Parole Commission; James C. Woodard, individually and in his person and official capacity as Chairman of the State of North Carolina Parole Commission,

Appellees.

Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. F. T. Dupree, Jr., District Judge.

Submitted: September 21, 1978 Decided: October 16, 1978

Before FIELD, Senior Circuit Judge, WIDENER and HALL, Circuit Judges.

(Daniel Ross, Appellant Pro Se; Richard N. League, Assistant Attorney General, counsel for the Appellees.)

PER CURIAM:

A review of the record and of the district court's opinion discloses that this appeal from the order of the district court denying relief under 42 U.S.C. § 1983 is without merit. Accordingly, although leave to proceed in forma pauperis is granted, the order is affirmed for the reasons stated by the district court. Ross v. Byrd, No. 78-317-CRT (E.D.N.C., July 7, 1978).

(6) The Parole Commission makes the rules and conditions an inmate must live by while on Parole and Conditional Release.

17. PAROLE ELIGIBILITY

All inmates except those that are sentenced as Committed Youthful Offenders (CYO's) and those who are sentenced to life must serve at least one-fourth of their minimum or lesser sentence in order to earn the right to be reviewed for Parole. To decide when inmates might be reviewed for Parole, the Parole Commission uses the following methods:

(1) Where the sentence is for a set time of months or years (Determinate) an inmate will be reviewed for Parole after he has served one-fourth of the total sentence. Example - An inmate serving a 10 year sentence will be reviewed for Parole after serving 2 1/2 years of the 10 year sentence (1/4 of 10 years equals 2 1/2 years).

(2) When the sentence has two parts a greater (maximum) and a lesser (minimum) part, it is called an Indeterminate Sentence. An inmate will be reviewed for Parole after he has served one-fourth of the lesser (minimum) sentence. Example - An inmate serving a sentence in which the Commitment reads "not less than 4 years nor more than 10 years" would be reviewed for Parole after serving 1 year of the minimum sentence of 4 years (1/4 of 4 years equals 1 year).

(3) When an inmate is serving two or more RYO sentences (Regular Youthful Offender) which are being served at the same time, they are called Concurrent Sentences. The inmate must serve one-fourth of the longer sentence before being reviewed for Parole. Example - An inmate serving a 4 year RYO sentence and a 6 year RYO sentence at the same time will be reviewed for Parole after serving 1 1/2 years which is one-fourth of the longer sentence of 6 years, (1/4 of 6 years equals 1 1/2 years).

(4) When an inmate is serving two or more sentences and one

is to be served after the other, they are called Consecutive Sentences. The inmate must serve one-fourth of the minimum or lesser sentences added together before he can be reviewed for Parole. Example - An inmate serving a "not less than 4 years nor more than 8 years" sentence and a "not less that 6 years nor more than 12 years" which are to be served one after the other will be reviewed for Parole after serving 2 1/2 years. This is one-fourth of the two smaller sentences (4 years and 6 years) added together; 1/4 of 10 years (4 plus 6 equals 10) equals 2 1/2 years. An inmate who is serving a life sentence for a crime which was committed before April 8, 1974, must serve 10 years before he is reviewed for Parole. An inmate who is serving a life sentence for a crime which was committed after April 8 1974, must serve 20 years before he is reviewed for Parole. Inmates who are serving life sentences that are to be served one after the other (Consecutive) must serve the minimum time required by law for each sentence.

Note: Any jail credit or other credits the inmate receives from the court will be reviewed against the time an inmate must serve before being reviewed for Parole.

Inmates who have been sentenced as Committed Youthful Offenders (CYO's) can be brought up for Conditional Release at any time after they come to prison. However, the Parole Commission may not release any inmate serving a Committed Youthful Offender Sentence without first getting a favorable recommendation from the Secretary of the Department of Correction unless the inmate has less than 90 days until his final release date. The Secretary of the Department of Correction has given this power to the Director of Prisons, who has review committees at the unit and area levels to make recommendations to the Parole Commission.

Note: Inmates who are serving both Committed Youthful Offender and Regular Youthful Offender Sentences must serve at least one-fourth of the Regular Youthful Offender Sentence before he is eligible for Conditional Release.

Note: The word "Conditional Release" is used to separate

Committed Youthful Offenders from other inmates with regular sentences. Other than this, "Conditional Release" and "Parole" are the same things, and the same conditions for release and conditions of supervision go for Committed Youthful Offenders as to other offenders.

Under North Carolina law, the Parole of prisoners is left up to the Parole Commission. There are, however, two cases in which the law gives the prisoner some claim to right of Parole:

(1) PAROLE AT ONE-THIRD: Inmates serving Misdemeanor sentences of less than 12 months who are in the custody of the Department of Correction are to be paroled at one-third of their sentence. (The Parole Commission may stop this Parole for good cause). A person so paroled is not supervised; however, if during the six months following Parole, the Parolee is charged with a new law violation and convicted, his Parole will be stopped and all of the remainder of the sentence from which he or she was Paroled must be served.

(2) NINETY-DAY PAROLE: All prisoners serving two years or more are to be given Parole 90 days before the end of their sentence unless the Parole Commission finds out the inmate's release would not be in agreement with the well being of society. The inmate's attitude, prison conduct, (how he gets along with others) and an acceptable Job and Home Plan have a great deal to do with whether or not the Commission finds that Parole in these cases will be in the best interest of the community and the inmate.

Inmates turned down on Parole in either of these two cases may request a hearing with an agent of the commission. When such hearings are held, a record is made and given to the Parole Commission for a final decision. Both Parole at One-Third and Ninety-Day Parole are handled by the Pre-Release and Aftercare Section and all questions you may have on either of these types of Parole should be mailed to that section at the Parole Commission's office in Raleigh.

18. THE PAROLE PROCESS IN BRIEF

Every inmate that comes into prison is given a number and a file jacket. All information that the inmate and the prison have in common goes into this jacket. This includes commitment papers, medical history, and reports from the Division of Prisons on conduct and activities. Also letters written to and about the inmate are placed in this file.

Before an inmate is thought about for Parole, the Parole Commission does the following things:

(a) A Parole Officer goes to the home that the inmate plans to go back to and asks questions about the inmate.

(b) A Parole Officer will talk to the Sheriff or Police Chief about the crime the inmate committed.

(c) A Parole Officer will get a clear picture of the inmate's past life. Ninety days before an inmate might be able to be released on Parole, his file is studied by an assigned Case Analyst. If the report is good, the Parole Officer goes into the town and talks to all the above mentioned people about the inmate. If the report is bad, the Case Analyst will send the case to the Parole Commission and recommend that Parole be turned down. Then a new review date must be set no more than twelve months later.

A Pre-parole investigation takes between 90 and 120 days before a decision is made by the Parole Commission. Then the inmate is told of this decision.

If there is no Pre-parole investigation, and the Case Analyst recommends that Parole not be given, three members of the Parole Commission must agree with this decision. Any one of the Commissioners can disagree with the Case Analyst. He can order the case looked into or order an earlier review date set. If Parole is not recommended, a new Parole review date is set within the next 12 months. Only a Parole Commissioner can move up this date.

In all Felony cases the Parole Commission will ask the opinions of the following people or agencies:

(a) The Judge who sentenced the inmate;

(b) The District Attorney;
(c) The Police or Sheriff's Department;
(d) Parole Officers;
(e) Staff at inmate's prison unit;
(f) The Case Analyst.

Family and people who know the family and the inmate may offer recommendations for the inmate. These recommendations will be written. They must tell why the inmate deserves Parole. These recommendations are put in the inmate's file to be read by the Commissioners.

In some cases the inmate may be called to meet with members of the Parole Commission. When an inmate knows he is to meet and talk with a member of the Parole Commission, he should have in hand his Job and Home Plan. The inmate should tell the Parole Commission what his reasons are for thinking he can make it on Parole.

Because there are so many inmates to meet and talk with, the Commission does not want visitors present. When a visitor has permission to meet with the committee for an inmate, the visitor will have only five minutes to say what he wants to say. The visitor gets permission to meet with the Parole Commission from the Case Analyst or the Office of the Parole Commission. This meeting gives the Parole Commission a chance to meet the inmate face to face. Then the inmate is able to speak for himself in private.

19. FACTORS CONSIDERED IN MAKING THE PAROLE DECISION

Parole is not a right. There are certain things that must be done before an inmate can be given Parole. The Parole Commission must by law be sure of the following things:

(1) The prisoner will (most likely) not break any laws.
(2) The prisoner is not a threat or danger to the people who live in his town or to other people in the State.
(3) The prisoner is shown (by his record) to have followed the rules of the prison.
(4) The prisoner does not want to get even with any person who arrested, sentenced, or testified against him.

(4) Custody Level. The Parole Commission does not give Parole to inmates in **Close or Maximum Custody** unless they are being kept at that level for their own protection. As a rule, inmates will not be Paroled out of **Medium Custody** (brown clothes). The Parole Commission wants the inmate to be in **Minimum Custody** so it can watch his actions and the way he handles responsibility.

(5) Escapes, Break-Outs. The Parole Commission looks at a recent escape by an inmate as a sign that he is likely to leave Parole supervision.

(6) Attitude. N. C. law says that an inmate should not hold a grudge against the people who put or kept him in prison.

(7) Work Release/Study Release. Inmates can help their chance for parole by doing well on Work Release or Study Release.

(8) Alcohol-Drug Background. An inmate who has never had an alcohol or drug problem will find themselves in good standings with the Parole Commission in this matter. Inmates who have used alcohol and/or drugs can off-set their bad influence by joining groups like AA, Drug Counseling, Mental Health Counseling, and by not using either alcohol or drugs while in prison, or away from prison on Work Release or on Home Leaves.

(9) Previous Parole and Probation. Both Probation and Parole are favors given by the State which must be repaid by the individual with responsible behavior. An inmate who has gone to prison, got out on Parole and did not mess up before the Parole ended, has a good chance of making Parole again. Someone who has lost his Parole before or messed up while on Parole would have a lesser chance of making it again. To commit a new crime while on Probation or Parole is the worst thing an inmate can do.

(10) Employment Plan. Inmates will not be granted Parole unless they have a job or have enough money to support themselves without going on welfare. The Parole Commission calls for the inmate to have a full-time job. The Parole Commission will not agree to a job in which the inmate must handle alcoholic beverages or bring the inmate close to bad people. School

Plan may be used by inmates who need more education or training.

NOTE: After an inmate has met all the conditions for Parole except for finding a job, he may be able to get a 30 day Parole in order to look for a job. These leaves will be given to inmates whose prison records are spotless and have no drug or alcohol problems.

(11) Residence Plans. The Parole Commission demands that the home in which the inmate plans to live be cooperative, stable, and moral. Without the cooperation of the home, the Parolee has a greater chance of failure.

20. NOTIFICATION OF PAROLE DENIAL

When an inmate is turned down for Parole, he will get a letter giving the reasons why he didn't get Parole. The reasons will be given in terms of the requirements for Parole and certain points in the inmate's case will be given to back-up the decision.

21. INTERSTATE PAROLE COMPACT

In some cases an inmate may be granted Parole to another State. Parole cannot be granted to another State unless there is an agreement between that State and North Carolina concerning Parole. This agreement is called the Interstate Parole Compact.

22. PAROLE SUPERVISION

Inmates on One-Third Parole will not have a Parole Officer in charge of their Paroles, but all other inmates on Parole/Conditional Release will have a Parole Officer whose job it is to make sure the inmate lives up to the rules and conditions of his Parole. Each day that an inmate is on Parole counts the same as if the inmate was serving his sentence in prison. The Parole Commission has the power to end an inmate's Parole. This means that the inmate will be released from his sentence the same as if the inmate had served the whole sentence. When an inmate serving a Felon sentence either completes his sentence or has his Parole terminated by the Parole Commission, his citizenship rights will be returned to him.

The two reasons why parole is most often turned down are: (1) The Parole Commission thinks that the inmate will most likely break another law. (2) The inmate's record in prison shows that he did not follow the rules while in prison.

An inmate who has been in prison more than one time, on probation, or arrested and convicted, will most likely not make Parole the first time he is reviewed. An inmate who has never been arrested and convicted or only has been convicted for lesser criminal acts may receive Parole as soon as he has served the least (smallest) amount of time needed by law. The way an inmate acts in prison can show the Parole Commission that he is ready for Parole. North Carolina says that the Parole Commission must be sure that the inmate has gone by all the rules and regulations while in prison. An inmate who has been locked up because of a disciplinary hearing must prove that he has changed by doing more than the rules ask of him to prove that he is able to get along in prison. Doing good in prison does not make sure of an inmate's chances of getting Paroled. However, the inmate will not get Parole if he has not done well in prison.

The following are examples which have either good or bad effects on the chances of making Parole:

(1) The type of crime and how it was committed. The Parole Commission wants to answer the question - Has the inmate served enough time on his sentence as punishment for the crime?

(2) The feelings of the officials and the people in the community. The Police Department and the people in the neighborhood are asked about the inmate and how they think that he will get along on Parole. The opinions of these people carry weight with the Commission.

(3) Medical, Psychiatric, and Psychological Reports. These reports are very useful to the Parole Commission in answering questions about fitness of the prisoner for Parole. An example: An inmate that is doing time for badly hurting someone is not a mean or hurtful person by nature and will not likely do it again. The reports also show how the inmate has grown up in his thinking and actions. These reports will not be shown to anyone else.

134 A + Print

File # 68-CR-4266

Film #

STATE OF NORTH CAROLINA

County of Wake

In The General Court of Justice

Superior Court Division

P6726, 153, 21747, 92 (2)

The State of North Carolina

vs.

Daniel Ross

Name, Age, Sex and Race of Defendant

JUDGMENT AND COMMITMENT

In open court, the defendant appeared for trial upon the charge ~~or charges~~ of Murder

and thereupon entered a plea of not guilty. Evidence was heard for the state and for the defendant including testimony of the defendant in his own behalf. The Jury, after deliberation, returned a verdict of guilty of Murder in the 1st degree with the recommendation that punishment be life imprisonment in the State Prison.

Having been found guilty of the offense of murder in the 1st degree with the recommendation that the punishment be life imprisonment in the State Prison

which is a violation of ~~the law~~ G.S. 14-17 and of the grade of felony

It is ADJUDGED that the defendant be imprisoned for the term of the remainder of his natural life in the State Prison to be assigned to work under the supervision of the North Carolina Department of Correction.

Rec'd 1 env w/2 Bes 3-20-69

It is ORDERED that the Clerk deliver two certified copies of this judgment and Commitment to the Sheriff or other qualified officer and that said officer cause the defendant to be delivered, with such copies as commitment authority, to the appropriate official of the State Department of Correction.

This 19th day of March , 19 69.

Leo Carr

Presiding Judge

Attorney for Defendant: William W. Merriman

Attorney for the State: W. G. Ransdell, Jr.

Date certified copies of judgment delivered to Sheriff for commitment: 10-29-1969 mailed

AOC-L FORM 183

APPEAL ENTRIES

In apt time, the defendant objects and excepts to the rulings udgment of th t and notice of appeal to the North Caroli eme Court

Further notice waived.

The defendant is allowed 60 prepare and serv on appeal, and the Sta owed 30 days after such service to prep rve counterc

Appearance bond is fixed in the sum ance

Appeal bond is set at $

This 19th day of March

Presiding Judge

10/28/1969 CERTIFICATE OF OPINION AND JUDGMEN ceived from N.C. SUPREME COURT endorsed "NO ERROR". Commitment issued a ailed to N.C.D.C.

CERTIFICATION TO DEPARTMENT OF CORR ON

I certify that this document is a true and complete copy of the origi dgment and Commitment in the case named, now on file in this office, and that this copy is certified to North Carolina State Department of Correction, as in said judgment directed, as authority for the tion of the prison sentence therein imposed.

Witness my hand and the seal of the Superior Court.

This 29 day of October , 19 69

Deputy Cler he Superior Court

IN THE SUPREME COURT OF THE

UNITED STATES

NO. 78-5693

DANIEL ROSS, Petitioner v. KAYE BYRD, et al., Respondents	)	AFFIDAVIT

I, James C. Woodard, first being sworn, depose and say:

That I am the Chairman of the North Carolina Parole Commission and my offices are located in Raleigh.

Daniel Ross began serving a life sentence on March 26, 1969, having been convicted of murder in the first degree in the Superior Court of Wake County. Under the Statutes in effect at the time of Daniel Ross' conviction, N.C.G.S. § 148-58, a person serving a life sentence became eligible for parole after serving 10 years of the sentence. This Statute has been applied to Daniel Ross to determine his parole eligibility date.

As noted herein, Daniel Ross began serving his sentence on March 26, 1969 and after serving six years and four months of his sentence he escaped from the facilities of the Department of Correction. Daniel Ross was returned to the authority of the Department of Correction on September 29, 1977 after having been out on escape for approximately two years and two months. Daniel Ross has served one year and three months since having been returned to the Department of Correction in September, 1977. The two years and two months that Daniel Ross was out on escape does not count towards his parole eligibility date, and therefore his parole eligibility date has been set forward to February 10, 1981.

Daniel Ross' case has never been considered by the Parole Commission because he has failed to serve a sufficient amount of time on his life sentence to be eligible for parole consideration, however, Daniel Ross will be promptly considered for parole as soon as he is eligible and the parole review process will begin in December, 1980.

This the 11th day of January, 1979.

James C. Woodard
Affiant

Sworn to and subscribed before me this the 11th day of January, 1979.

Ella E. Allen
Notary Public

My Commission Expires: My Commission Expires December 5, 1979